

BELLSOUTH

W. W. (Whit) Jordan
Vice President-Federal Regulatory

EX PARTE OR LATE FILED

Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4114
Fax: 202 463-4198
Internet: jordan.white@bsc.bls.com

June 24, 1998

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

RE: CC Docket No. 98-39

Dear Ms. Salas:

Today, Bob Scheye, David Richards, and the undersigned, all representing BellSouth, met with Paul Galant from Commissioner Tristani's office, Kyle Dixon from Commissioner Powell's office, Kevin Martin from Commissioner Furchgott-Roth's office and Carol Matthey, Linda Kinney and Liz Nightingale from the Common Carrier Bureau in connection with the above referenced proceeding. At these meetings, the attached material was discussed. BellSouth urged the Commission to dismiss the Comptel petition as a late filed petition for reconsideration or, alternatively, clarify or reiterate that its current rules allow an ILEC affiliate to operate as a CLEC based upon safeguards that are in place today.

Yours truly,

W. W. Jordan

William (Whit) Jordan
Vice-President – Federal Regulatory

Attachment

cc: Paul Gallant Linda Kinney
Kyle Dixon Liz Nightingale
Kevin Martin Carol Matthey

RECEIVED

JUN 24 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

No. of Copies rec'd
List ABCDE

CompTel Petition for Declaratory Ruling CC Docket No. 98-39

BellSouth BSE:

- Incorporated in July 1997 to be a CLEC
- Filed for Certification in 21 States
 - 9 “In Region”
 - 12 “Out of Region”

Capabilities:

- Resale of ILEC services
- Use of Unbundled Network elements

Services:

- Integrated Packages, e.g. local, wireless, long distance, paging, etc.
- Multi-state integration for businesses

Operational Interfaces:

- Standard Negotiated Agreements with ILECs
- Same OSS as any other CLEC

Structure:

- Arms length from ILEC
- Established as “272-like”

1996 Act and FCC Rules Support ILEC Affiliates Acting As CLEC

1996 Act:

- Envisions a 272 Affiliate providing long distance and local
- Because 272 Affiliate must be separate from ILEC, it must be a CLEC

Commission – Docket 96-98 and 96-149:

- Describes when Affiliate would be comparable to ILEC
- Reference to transfer of facilities used for UNEs
- Affiliate is in public interest by providing new and innovative services
- [FCC Rule 53.207; 96-149 Paragraphs 308to 317]

CURRENT PROCESS HINDERING THE ABILITY TO ACHIEVE ACT AND COMMISSION OBJECTIVES

- **CompTel Petition**
- **State Intervention Revisiting “Resolved” issues**
- **BSE status “in region”:**
 - **3 State approvals – GA, AL, SC**
 - **1 State denial – KY**
 - **2 States with unique issues**
 - **LA rules defines ILEC to include all Affiliates**
 - **TN AT&T-BST (ILEC) arbitrated agreement binds affiliates**
 - **3 remaining states pending**
- **Contradictory positions being expressed, e.g.:**
 - **AT&T/MCI-in 96-149—Affiliate can resell, but should not be allowed to purchase UNEs :**
 - **AT&T/MCI is FL/KY—Affiliate can purchase UNEs but restrict resale**

**OBJECTIVES OF THE ACT AND
COMMISSION MAY NOT BE MET WITHOUT
ADDITIONAL ACTION BY THE COMMISSION**

- Clarify that prohibiting an ILEC Affiliate from becoming a CLEC would deny the complete implementation of the Act
- Clarify/restate the Commission's Orders and rules that allow an ILEC Affiliate to operate as a CLEC based upon safeguards in place
- Invoke the provisions of Section 253, if necessary—removal of barriers to entry
- Clarify that only Affiliates established under 274 (electronic publishing) have any restrictions on the use of Bell operating company's name
- Act expeditiously

BellSouth BSE, Inc. Applications

IN REGION

STATE	DATE FILED	DOCKET NUMBER	CERTIFICATE GRANTED
Alabama	10/15/97	26192	2/6/98
Florida	8/15/97	97-1056	Approved outside BST Territory 10/7/97, Inside BST Territory pending
Georgia	9/9/97	8043-U	3/5/98
Kentucky	10/1/97	97-417	Approved outside BST Territory 6/8/98 Inside BST Territory denied
Louisiana	10/10/97	U-22865	
Mississippi	10/2/97	1997-UA-625	
North Carolina	10/8/97	P691, Sub. 0	
South Carolina	8/21/97	97-361C	12/16/97
Tennessee	10/30/97	97-07505	

OUT OF REGION

STATE	DATE FILED	DOCKET NUMBER	CERTIFICATE GRANTED
Arkansas	1/20/98	98U015U	
California	To be filed 7/98		
Colorado	3/11/98	98A-099T	4/22/98
Hawaii	9/11/97	97-0336	10/6/97
Illinois	8/13/97	97-0374	12/3/97
Indiana	8/13/97	40948	10/8/97
Michigan	To be filed 7/98		
Missouri	9/17/97	TA-98-124	1/23/98
New Jersey	12/19/97		
New York	12/19/97		2/25/98
Ohio	8/13/97	97-885-TP-ACE	10/10/97
Pennsylvania	1/15/98	M-00960799	
Texas	3/9/98	18984	5/6/98
Virginia	10/31/97	PUC970172	2/10/98

EXHIBIT 1

CLECs Approved in Affiliate's ILEC Territory

STATE	ILEC	CLEC	DATE OF ORDER
Alabama	BELLSOUTH	Approved	2/02/98
California	GTE	Approved	12/30/95 & 2/23/96
Connecticut	SNET	Approved	6/25/97
Florida	BELLSOUTH	*Approved	10/27/97
Florida	GTE	Approved	2/24/97
Florida	SPRINT	Approved	12/28/95
Georgia	BELLSOUTH	Approved	3/5/98
Kansas	SPRINT	Approved	8/7/96
Michigan	AMERITECH	Approved	8/28/96
Missouri	Sprint	Approved	2/28/97
Nebraska	SPRINT	Approved	3/10/97
Nevada	SPRINT	Approved	11/17/97
New Jersey	SPRINT	Approved	7/17/96
North Carolina	GTE	Approved	4/16/97
North Carolina	SPRINT	Approved	3/24/97
Pennsylvania	SPRINT	Approved	12/05/96
South Carolina	GTE	Approved	9/12/97
South Carolina	SPRINT	Approved	12/3/96
South Carolina	BELLSOUTH	Approved	12/23/97
Tennessee	SPRINT	Approved	10/3/96
Virginia	SPRINT	Approved	11/8/96
Washington	SPRINT	Approved	7/9/97
Wisconsin	AMERITECH	Approved	11/26/96

* Approved by PSC, protests filed.

JOINT BRIEF OF FCCA, AT&T AND MCI
TO FLORIDA PSC - JUNE 15, 1998, DOCKET 971056-TX

accepted at face value. More fundamentally, Mr. Scheye's complaint is based on the erroneous assumption that the profitability or lack of profitability of BSE's operations in BST's ILEC service area is meaningful for purposes of this proceeding. As has been seen, in the context of a parent and affiliated subsidiaries engaged in a common enterprise -- attended by subsidies, shared resources, and transfer payments -- BSE's individual "bottom line" is an artificial distinction that has no meaning. (Tr. 105). Finally, the requirement would not be a penalty because -- as the record demonstrates -- BellSouth BST can do everything that BellSouth BSE proposes to do. Even Mr. Scheye acknowledged that the establishment of BellSouth BSE is a matter of choice, not a legal requirement. (Tr. 199). Should the Commission allow BSE to subvert the state and federal regulatory regimes because BellSouth BST has a lot "on its plate"? (Tr. 200). If conditions are necessary to prevent this "choice" from having the effect of circumventing legal requirements, then BellSouth cannot complain. It can always elect to do business through the ILEC.

As another alternative, if the Commission does not restrict BellSouth BSE from providing ALEC service in BST's service area, and decides not to impose the wholesale discount applicable to BST on BSE, then it should prohibit BSE from acquiring services from BellSouth Telecommunications for resale. Requiring BellSouth BSE to utilize unbundled network elements instead of resale in BST's ILEC service area would at least place BellSouth BSE and its competitors on an equal footing.

BSE CERTIFICATION HEARING
BEFORE FLORIDA PSC - APRIL 27, 1998 ¹³⁰

1 the existing network -- because it's the only one out
2 there -- with the ability to start bringing these
3 prices down.

4 COMMISSIONER GARCIA: I don't think the Act
5 was meant to take away business from certain people.
6 I think it was meant to create competition. That the
7 competition would have that affect is yet to be seen
8 by everyone. But I don't think it was meant to take
9 away customers, from one person or another, was it?

10 WITNESS GILLAN: We might be just discussing
11 semantics. It's seems to me competition inherently
12 means that customers are going to move among
13 providers.

14 COMMISSIONER GARCIA: All right.

15 CHAIRMAN JOHNSON: Mr. Gillan, do you have
16 any more?

17 WITNESS GILLAN: No. I've finished my
18 summary with that.

19 CHAIRMAN JOHNSON: The witness is available
20 for cross.

21 MR. MCGLOTHLIN: Yes, ma'am.

22 CROSS EXAMINATION - BY BELLSOUTH BSE
23 BY MR. LIGHTSEY: OF AT&T, ETC. WITNESS

24 Q Mr. Gillan, you are testifying today on
25 behalf of AT&T as well as other carriers; is that not

1 correct?

2 A Yes.

3 Q And following this lengthy discussion, it is
4 your opinion that it is the resale of BellSouth
5 Telecommunications Service by BellSouth BSE that
6 possess this potential anticompetitive damage to the
7 marketplace in the state of Florida?

8 A That's one of them, yes.

9 Q So you would disagree with the comments of
10 AT&T that they made before the FCC in the joint
11 marketing docket, in which they said, and I quote,
12 "The joint marketing provisions of Section 272(G)
13 likewise make clear that the provision of exchange
14 services by the affiliate, other than through resale,
15 would be inconsistent with the statute."

16 A Yes.

17 Q Now, Mr. Gillan, you testified also --

18 COMMISSIONER DEASON: Can you repeat that
19 statement again that he just disagreed with?

20 WITNESS GILLAN: I didn't disagree with it.
21 I agreed with it.

22 COMMISSIONER DEASON: Oh, you agreed with
23 it.

24 WITNESS GILLAN: Well, I disagree with my
25 client.

AT&T BRIEF - US DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE, APRIL 13, 1998
CIVIL ACTION NO. 3-97-0523 - "AFFILIATE
LANGUAGE IN AT&T-BST AGREEMENT"

cannot be subjected to any obligations under the Agreement because it is not itself a local
exchange carrier. See Mem. at 2.⁵

BellSouth also asks that this Court consider the implications of the affiliates language
for BellSouth BSE, a new "competitive" local exchange carrier seeking authorization to
compete in Tennessee and elsewhere. See Mem. at 13. It is at least curious that BellSouth's
parent, BellSouth Corporation, is setting up a new entity to compete with BellSouth in
Tennessee, but in any case BellSouth BSE is unimpeded by the Agreement except insofar as it
affects the fulfillment of BellSouth's obligations to AT&T under the Act, the FCC regulations,
and the Agreement. Whatever the purposes of BellSouth BSE, the TRA was fully entitled to
protect against the possibility that BellSouth might use its affiliates to escape those obligations.
BellSouth has a long history of attempting to use affiliates to evade or minimize its regulatory
obligations in Tennessee. See, e.g., Order, In re Petition of South Central Bell Tel. Co. to
Change & Increase Certain Rates & Charges For Intrastate Tel. Serv., No. U-83-7248 (Tenn.
P.S.C. Jan. 18, 1984) (ruling that South Central Bell, predecessor to BellSouth, could not
exclude yellow pages revenues from the computation of its rates simply because it set up
BAPCO as an independent entity to publish yellow pages) (Exh. N). Nothing in the Act limits
the TRA to creating such protections only against evasions that occur through assignment or
succession, as BellSouth contends.

⁵ Contrary to its current assertions of BAPCO's independence, BellSouth represented in the Agreement that "in the case of directory listings for white pages [BellSouth] may cause BellSouth Advertising and Publishing Company ("BAPCO") to take such actions to fulfill BellSouth's responsibilities." Agreement § 1 (Exh. A).